

Office of Personnel Management

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exception under their own regulations, to permit a provider to participate in their programs, notwithstanding the OPM debarment.

(c) *Civil or criminal liability.* A provider may be subject to civil monetary penalties under this subpart or criminal liability under other Federal statutes for knowingly filing claims, causing claims to be filed, or accepting payment from FEHBP carriers for items or services furnished to a covered individual during a period of debarment.

NOTIFYING OUTSIDE PARTIES ABOUT DEBARMENT AND SUSPENSION ACTIONS

§ 890.1044 Entities notified of OPM-issued debarments and suspensions.

When OPM debars or suspends a provider under this subpart, OPM shall notify:

- (a) All FEHBP carriers;
- (b) The General Services Administration, for publication in the comprehensive Governmentwide list of Federal agency exclusions;
- (c) Other Federal agencies that administer health care or health benefits programs; and
- (d) State and local agencies, authorities, boards, or other organizations with health care licensing or certification responsibilities.

§ 890.1045 Informing persons covered by FEHBP about debarment or suspension of their provider.

FEHBP carriers are required to notify covered individuals who have obtained items or services from a debarred or suspended provider within one year of the date of the debarment or suspension of:

- (a) The existence of the provider's debarment or suspension;
- (b) The minimum period remaining in the provider's period of debarment; and
- (c) The requirement that OPM terminate the debarment or suspension before FEHBP funds can be paid for items or services the provider furnishes to covered individuals.

EXCEPTIONS TO THE EFFECT OF DEBARMENTS

§ 890.1046 Effect of debarment on payments for services furnished in emergency situations.

A debarred health care provider may receive FEHBP funds paid for items or services furnished on an emergency basis if the FEHBP carrier serving the covered individual determines that:

- (a) The provider's treatment was essential to the health and safety of the covered individual; and
- (b) No other source of equivalent treatment was reasonably available.

§ 890.1047 Special rules for institutional providers.

(a) *Covered individual admitted before debarment.* If a covered person is admitted as an inpatient before the effective date of an institutional provider's debarment, that provider may continue to receive payment of FEHBP funds for inpatient institutional services until the covered person is released or transferred, unless the debarring official terminates payments under paragraph (b) of this section.

(b) *Health and safety of covered individuals.* If the debarring official determines that the health and safety of covered persons would be at risk if they remain in a debarred institution, OPM may terminate FEHBP payments at any time.

(c) *Notice of payment limitations.* If OPM limits any payment under paragraph (b) of this section, it shall immediately send written notice of its action to the institutional provider.

(d) *Finality of debarring official's decision.* The debarring official's decision to limit or deny payments under paragraph (b) of this section is not subject to further administrative review or reconsideration.

§ 890.1048 Waiver of debarment for a provider that is the sole source of health care services in a community.

(a) *Application required.* A provider may apply for a limited waiver of debarment at any time after receiving OPM's notice of proposed debarment.

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Suspended providers are not eligible to request a waiver of suspension.

(b) *Criteria for granting waiver.* To receive a waiver, a provider shall clearly demonstrate that:

(1) The provider is the *sole community provider* or the *sole source of essential specialized services in a community*;

(2) A limited waiver of debarment would be in the best interests of covered individuals in the defined service area;

(3) There are reasonable assurances that the actions which formed the basis for the debarment shall not recur; and

(4) There is no basis under this subpart for continuing the debarment.

(c) *Waiver applies only in the defined service area.* A limited waiver applies only to items or services provided within the defined service area where a provider is the *sole community provider* or *sole source of essential specialized services*.

(d) *Governmentwide effect continues.* A limited waiver applies only to a provider's FEHBP transactions. Even if OPM waives a debarment for FEHBP purposes, the governmentwide effect under section 2455 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) continues for all other Federal agencies' procurement and nonprocurement programs and activities.

(e) *Waiver rescinded if circumstances change.* OPM shall rescind the limited waiver when any of its underlying bases no longer apply. If OPM rescinds the limited waiver, the provider's debarment shall resume full effect for all FEHBP transactions. Events warranting rescission include, but are not limited to:

(1) The provider ceases to furnish items or services in the defined service area;

(2) Another provider begins to furnish equivalent items or services in the defined service area, so that the provider who received a waiver is no longer the sole provider or sole source; or

(3) The actions that formed the basis for the provider's debarment, or similar acts, recur.

(f) *Effect on period of debarment.* The minimum period of debarment is established when the debarment is initially

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imposed. A subsequent decision to grant, deny, or rescind a limited waiver shall not change that period.

(g) *Application is necessary for reinstatement.* A provider who has received a limited waiver shall apply for reinstatement at the end of the debarment period, even if a limited waiver is in effect when the debarment expires.

(h) *Finality of debarring official's decision.* The debarring official's decision to grant or deny a limited waiver is final and not subject to further administrative review or reconsideration.

SPECIAL EXCEPTIONS TO PROTECT COVERED PERSONS

§ 890.1049 Claims for non-emergency items or services furnished by a debarred provider.

(a) *Covered individual unaware of debarment.* FEHBP funds may be paid for items and services furnished by a debarred provider if, at the time the items or services were furnished, the covered individual did not know, and could not reasonably be expected to know, that the provider was debarred. This provision is intended solely to protect the interests of FEHBP covered persons who obtain services from a debarred or suspended provider in good faith and without knowledge that the provider has been sanctioned. It does not authorize debarred or suspended providers to submit claims for payment to FEHBP carriers.

(b) *Notice sent by carrier.* When paying a claim under the authority of paragraph (a) of this section, an FEHBP carrier shall send a written notice to the covered individual, stating that:

(1) The provider is debarred and prohibited from receiving payment of FEHBP funds for items or services furnished after the debarment date;

(2) Claims shall not be paid for items or services furnished by the debarred provider after the covered individual receives notice of the debarment;

(3) The current claim is being paid as a legally-authorized exception to the effect of the debarment in order to protect covered individuals who obtain items or services without knowledge of the provider's debarment;

(4) FEHBP carriers are required to deny payment of any claim for items or